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THE INTERSECTION OF “INTERNET TERRORISM” AND “INDIVIDUAL PRIVACY” IN THE CONTEXT OF THE FIRST AMENDMENT

AMANDA LEONARD*

“Deterring Russia, channeling growing Chinese power, and working with others to dismantle the Islamic State are daunting challenges — but not greater than rebuilding post-World War II Europe, containing the Soviet Union, ending the Cold War, and promoting democratic governance throughout much of the modern world.”¹

— James Dobbins

The “modern world” that Ambassador James Dobbins speaks of faces a mounting threat: Internet Terrorism. The dawn of the 21st Century coupled with the post-9/11 world in which we live has completely transformed the way war is waged. The First Amendment of the United States Constitution reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press.”²

The Internet is a platform used to express opinions, share ideas, and absorb information.³ However, it has become weaponized to perpetuate radicalism, violence, and instability.⁴ Both the Federal Bureau of Investigation and the Central Intelligence Agency list terrorism and cyber warfare as the top two threats to our Nation’s security.⁵ We live in a digital age where culture is shaped by the media through the utilization of the Internet. It is an intangible infrastructure where ideas, beliefs, thoughts, and opinions are shared, debated, criticized, tweeted, hash-tagged, and posted.⁶ How do

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¹ James Dobbins, *Reports of Our Global Disorder Have Been Greatly Exaggerated*, FOREIGN POLICY (July 22, 2015), <http://foreignpolicy.com/2015/07/22/reports-of-our-global-disorder-have-been-greatly-exaggerated-russia-china-us-leadership/>.

² U.S. CONST. amend. I.

³ See Danielle L. Nottea, *The State Secrets Privilege: Distinguishing State Secrets in the Age of Information*, 42 SW. U. L. REV. 701, 729 (2013) (explaining that the Internet reaches a wide audience and can quickly distribute political information).

⁴ See Todd M. Gardella, *Beyond Terrorism: The Potential Chilling Effect on the Internet of Broad Law Enforcement Legislation*, 80 ST. JOHN’S L. REV. 655, 655–56 (2006) (stating that, while the Internet can inspire free expression and progress, it can also serve as a safe haven for terrorists).

⁵ Dale L. Watson, *Before the Senate Select Committee on Intelligence*, FBI (Feb. 6, 2002), <https://www.fbi.gov/news/testimony/the-terrorist-threat-confronting-the-united-states>.

⁶ See generally Jeremy D. Lemon, *Reclassifying Broadband Internet Access: Who Cares What Congress Wants Anyway?*, 6

we, as a country, combat the threats of terrorism and cyber warfare while continuing to preserve the life, liberty, and property of the American people that the Constitution protects?⁷

The Constitution does not explicitly define privacy as a right to the people; however, the Supreme Court has historically handed down decisions that suggest a broader reading of the Constitution, which protects an individual's rights to privacy and free speech.⁸ In *Anthony Douglas Elonis v. United States*, the Supreme Court undertook for the first time a case that considers threats and the limits of free speech in the context of the Internet.⁹ The petitioner was convicted of violating 18 U.S.C. §875(c) under instructions that required the jury to find that he communicated what a reasonable person would regard as a threat.¹⁰ The question was whether the statute also requires that the defendant be aware of the threatening nature of the communication, and—if not—whether the First Amendment requires such a showing.¹¹

Presently, the First Amendment is at a severe crossroads in the context of freedom of speech and the perpetuation of violence through Internet discord.¹² Terrorism and cyber attacks via the Internet are growing dangers to our Nation's security.¹³ An example of this multifaceted paradigm are the recent arrests of United States citizens charged with terrorism-related crimes. This includes the arrests of two women from Queens who allegedly conspired with an undercover federal agent to make a bomb, as well as a man from Texas who was arrested for attempting to train alongside the Muslim militants who plotted to attack the subways in New York City.¹⁴ United States prosecutors also charged a Philadelphia woman of attempting to join the Islamic State after she expressed support for the group on Twitter and had online communications with a jihadi fighter based in Somalia.¹⁵

Going forward, national security law will play a crucial role in defining the gray area between an individual's freedom of speech and the profound use of the Internet to spread violent extremism.

LIBERTY U. L. REV. 137, 137 (2011) (pointing to the popularity of websites such as Facebook, Myspace, and Twitter, which allow users to post a personal profile).

⁷ U.S. CONST. amend. V.

⁸ See *Whalen v. Roe*, 429 U.S. 589, 600 (1977) (referencing Professor Kurland who has written: "The concept of a constitutional right of privacy still remains largely undefined. There are at least three facets that have been partially revealed, but their form and shape remain to be fully ascertained. The first is the right of the individual to be free in his private affairs from governmental surveillance and intrusion. The second is the right of an individual not to have his private affairs made public by the government. The third is the right of an individual to be free in action, thought, experience, and belief from governmental compulsion").

⁹ See *Elonis v. United States*, 135 S. Ct. 2001, 2002 (2015) (stating that federal law makes it a crime to transmit communication containing a threat).

¹⁰ See *Elonis*, 135 S. Ct. at 2002.

¹¹ See *id.*

¹² See Elizabeth M. Renieris, *Combating Incitement to Terrorism on the Internet: Comparative Approaches in the United States and United Kingdom and the Need for International Solution*, 11 VAND. J. ENT. & TECH. L. 673, 708 (2009) (explaining how the cross-border nature of terrorist use of the Internet has compelled international cooperation).

¹³ See generally Dawn C. Nunziato, *Freedom of Expression, Democratic Norms, and Internet Governance*, 52 EMORY L.J. 187 (2003) (recognizing that, as the Internet continues to transform into a conduit for mass expression, governments increasingly attempt to control speech on the Internet).

¹⁴ See Christie Smythe, *U.S. Citizens Swept Up in N.Y., Philadelphia Terrorism Arrests*, BLOOMBERG BUSINESS (April 3, 2015), <http://www.bloomberg.com/news/articles/2015-04-02/two-new-york-women-charged-by-u-s-in-alleged-terrorist-plot>.

¹⁵ See Smythe, *supra* note 14.

It seems that the First Amendment safeguards an individual's right to privacy through the penumbra of free speech.¹⁶ Nevertheless, as society becomes increasingly more reliant on the Internet, I predict the development of new laws that will restrict an individual's right to freely express his opinions through the Internet, especially if it continues to be used as a medium to spread terrorist ideologies that pose a threat to national security.

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¹⁶ See generally U.S. Const. amend. I.